

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Vernon A. Paroli
Amateur Radio Station
KA5OWW

NAL/Acct. No. 315OR0005

ORDER

Adopted: June 30, 1995;

Released: July 10, 1995

By the Chief, Compliance and Information Bureau:

I. INTRODUCTION

1. Mr. Vernon A. Paroli (Petitioner) filed a Petition for Reconsideration, seeking review of the monetary forfeiture of \$2,000 issued under authority of Section 503(b) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 503(b), for violating Section 333 of the Act, 47 U.S.C. § 333, and Section 97.101(d) of the Commission's rules, 47 C.F.R. § 97.101(d). For the reasons noted below, the Bureau reduces the monetary forfeiture to \$700.

II. BACKGROUND

2. On April 12, 1993, between 8:05 p.m. and 9:29 p.m., Petitioner transmitted signals on amateur radio frequencies 146.85 MHz and 146.76 MHz from amateur radio station KA5OWW. Petitioner used these signals to interfere with the communications of other amateur operators. Based on transcripts made from a recording of these transmissions, the New Orleans Office issued Petitioner a Notice of Apparent Liability (NAL) in the amount of \$2,000 on September 10, 1993.

3. Petitioner responded to the NAL, arguing that: he did not violate Section 97.101(d) of the rules; the transcripts upon which the NAL is based are incomplete or inaccurate and; he did not intentionally cause interference to other amateur operators, but that other amateurs interfered with his operations on the date in question. On November 5, 1993, the New Orleans Office issued a Notice of Forfeiture (NOF) for \$2,000. The Petitioner now appeals, stating that he did not violate Section 97.101(d) of the rules, contending again that the recordings and transcripts upon which the NAL is based are inaccurate or misleading, and now claiming inability to pay the forfeiture, submitting additional documentation in support.

III. DISCUSSION AND CONCLUSION

4. As an initial matter, we note that, in assessing the forfeiture amount, the New Orleans Office followed the forfeiture guidelines established in the Commission's *Policy Statement, Standards for Assessing Forfeitures*, (Policy Statement), 8 FCC Rcd 6215 (1993). On July 12, 1994, however, the Court of Appeals for the D.C. Circuit vacated the forfeiture guidelines. *United States Telephone Assn. v. FCC*, 28 F.3d 1232 (D.C. Cir. 1994). On reconsideration, the

Bureau has reassessed the amount pursuant to the statutory guidelines set forth in Section 503 of the Communications Act, 47 U.S.C. § 503(b)(2)(D). In particular, Section 503(b) of Act requires that the Commission "take into account the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require." 47 U.S.C. § 503(b)(2)(D).

5. Turning now to Petitioner's arguments, we note that his claim that he did not violate Section 97.101(d) of the rules goes to the ultimate issue in the case. In this regard, the transcripts reveal that, at approximately 8:04 p.m. on April 12, 1993, amateur radio station N5NBI, operating on 146.85 MHz, requested that operators checking into the net that evening wait for recognition before transmitting. Station N5JNX was identified as one of two operators that would not be recognized by the net. Petitioner, identifying himself as "KA5OWW mobile," made nine attempts to check in and not only was Petitioner not recognized, but he was also informed by net control station N5NBI that continued transmissions might constitute malicious interference. Petitioner made two more attempts to check in, then began a 28 minute conversation with amateur station N5NIX over communications already in progress. When the net moved operations to a new frequency of 146.76 MHz, Petitioner and station N5NIX followed and renewed their conversation over net operations for another 23 minutes until the net moved operations back to the original frequency of 146.85 MHz.

6. Petitioner's simple denial that he did not violate Section 97.101(d) of the rules does not address the nature of the violation in this case. Petitioner does not dispute that he transmitted on 146.85 MHz and 146.76 MHz on April 12, 1993, and that his transmissions interfered with the operation of other amateurs. He claims that he did not intend to willfully or maliciously interfere with other amateurs. However, Petitioner repeatedly interfered with communications in progress, transmitting without recognition and then conducting a conversation with another amateur that lasted 28 minutes. When net operations moved to a new frequency, Petitioner followed to the new frequency and continued to disrupt communications. Petitioner does not dispute these facts. Therefore, although Petitioner contends that other amateurs interfered with his operations that evening, it is clear that Petitioner's own operations constituted malicious interference with communications already in progress.

7. We reject Petitioner's contention that the recordings and transcripts on which the NAL is based are inaccurate or misleading. The transcripts were written by staff personnel at the Commission's New Orleans Office from recordings made the evening of April 12, 1993, by a local Amateur Auxiliary group. Use of amateur volunteers for the purpose of monitoring violations in the amateur service is permitted by the Act. 47 U.S.C. § 4(f)(4)(C). In fact, the amateur radio community has distinguished itself for its self-policing operations. See H.R. Rep. No. 765, 97th Cong., 2d Sess. 19 (1982) (Commission reporting to Congress the success of amateur self-monitoring efforts). The transcripts record only those portions of dialogue necessary to determine that Petitioner's repeated transmission over net operations, including two conversations over twenty minutes in length, constituted willful or malicious interference in violation of Section 97.101(d). Petitioner's claim that the transcripts, and particularly portions not transcribed, demonstrate that other amateurs interfered with

his operations is simply not relevant to Petitioner's case, nor is it an extenuating factor justifying his causing interference to other amateurs. In short, the transcripts fully support the facts set forth in the NAL.

8. We have reconsidered the monetary forfeiture amount in this case in accordance with the statutory factors set forth in Section 503(b) of the Act, 47 U.S.C. § 503(b)(2)(D). Recognizing the serious problem of willful or malicious interference to communications on amateur radio frequencies, taking into account congressional interest in this problem, *see* H.R. Rep. No. 552, 103d Cong., 2d Sess. 40 (1994), and given the evidence in this case demonstrating that Petitioner's actions could not in any way be considered accidental or unintentional, we conclude that the appropriate forfeiture amount is \$700. This amount reflects a reduction based on Petitioner's supported claim that he is financially unable to pay the \$2,000 forfeiture originally assessed. The information submitted by Petitioner in support of this claim is included in the Commission's case file and is afforded confidentiality under Section 0.459 of the rules. 47 C.F.R. § 0.459.

IV. ORDERING CLAUSES

9. IT IS ORDERED THAT, pursuant to Section 503(b) of the Act, 47 U.S.C. § 503(b), and Sections 1.80 and 1.106 of the Rules, 47 C.F.R. §§ 1.80, 1.106, the petition for reconsideration is GRANTED in part and the monetary forfeiture is REDUCED. Petitioner has thirty (30) days in which to appeal this decision pursuant to Section 1.115 of the rules. 47 C.F.R. § 1.115.

10. IT IS FURTHER ORDERED that Vernon A. Paroli must pay the forfeiture amount of seven-hundred dollars (\$700) within thirty (30) days of receipt of this Order. Payment may be made by check or money order payable to the Federal Communications Commission.¹ Please place NAL/Acct. No. 315OR0005 on the remittance and mail to:

Federal Communications Commission
P.O. Box 73482
Chicago, Illinois 60673-7482

11. IT IS FURTHER ORDERED that a copy of this Order shall be sent by certified mail, return receipt requested to Vernon A. Paroli.

FEDERAL COMMUNICATIONS COMMISSION

Beverly G. Baker
Chief, Compliance and Information Bureau

¹ Requests for installment plans should be mailed to: Chief, Billings and Collections, Mail Stop 1110A2, 1919 M Street, N.W., Washington, D.C. 20554. Payment of the forfeiture in installments may be considered as a separate matter in accordance with Section 1.1914 of the Commission's rules.